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## **Cover Page Footnote**

This paper was originally produced for the Cambridge Security Initiative's International Security and Intelligence Program at Pembroke College, University of Cambridge (now at Mount St. Mary's College in Maryland). My thanks go out to Dr. David Gioe of the United States Military Academy and Dr. Michael Goodman at King's College, London for their marvelous instruction. Thanks also to Dr. Nick Godfrey for admitting me to the program. Special thanks to Derrick Flakoll at the University of North Carolina, Chapel Hill for suggesting some of the literature necessary for this paper, to Frederic Ischebeck-Baum at King's College, London for the thoughtful supervision provided throughout the course of writing this paper, and to many of my fellow students, particularly those in my supervision, for their critique and camaraderie. Thank you to my parents and grandparents for their support. Finally, thank you to Sandrine Charlotte Bartos at the University of California, Los Angeles for her feedback, patience, and willingness to proofread this paper many, many times.

# After the Avalance: The Post-Snowden Intelligence Politics between the United States, the United Kingdom, and Germany

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## **ABSTRACT**

The revelations of PRISM and XKeyscore by ex-National Security Agency (NSA) analyst Edward Snowden resulted in arguably the largest intelligence leak so far in the 21<sup>st</sup> century. The leak revealed that the NSA was working with the British Government Communications Headquarters (GCHQ) on surveillance and data collection of individuals throughout Europe. Similarly, the NSA also colluded with the German Federal Intelligence Service (BND) on similar data collection and surveillance activities. Whereas the British government reacted relatively benignly to the revelations despite cries of government abuse, the German government reacted negatively to the revelations, eventually opening a rift between Washington and Berlin. This paper examines the reactions to and the immediate political consequences of the Snowden revelations within the United Kingdom and Germany. By comparing and contrasting the two cases, one can determine whether the United States unnecessarily antagonized the Germans or if larger forces were at work.

## **KEYWORDS**

Germany, United Kingdom, Edward Snowden, intelligence, surveillance

One year after Edward Snowden first leaked information surrounding the United States National Security Agency's (NSA) data collection programs, German authorities arrested an employee of the Federal Intelligence Service (BND), Germany's foreign intelligence and security service, on the charge of conducting espionage on behalf of the United States (Larimer, 2014). The episode sparked wide domestic rebuke of American intelligence activities within Germany. One week later, broadcaster Deutsche Welle aired an episode of international talk show *Quadrige* that discussed the growing political divide between the United States and Germany over espionage and intelligence gathering. The arrest was only the latest in a string of espionage exposés regarding American intelligence gathering within Germany, all of which contributed to growing anti-American sentiment amongst both German politicians and public alike. Referring to German political outrage against the United States over the discovered agent, Tom Goeller, former German correspondent for the *Washington Times*, said "[the] problem is very simple: the German nation, the public wasn't aware, they didn't know. But the politicians knew, the diplomats knew, and this is why I do not understand the outrage of German politicians" (Goeller, 2014). Expectedly, the public reacted negatively to the spy, but the German officials' sharp condemnation of what seemed a common and expected act of espionage illuminated a long saga of political toxicity regarding American intelligence gathering within the Germany, regardless of whether the German government itself was implicated in some of those activities.

Germany was not the only state involved in the initial surveillance revelations. Other North Atlantic Treaty Organization (NATO) members, including the United Kingdom and France, were also subject data-gathering and surveillance programs run by the NSA. Government intelligence agencies within both the United Kingdom and Germany were complicit in NSA data-gathering and surveillance activities on their respective homelands. As James Igoe Walsh aptly notes, the "sharing of intelligence between national governments is at the centre of their attempts to cooperate on contemporary problems such as preventing the proliferation of weapons of mass destruction and stopping the activities of terrorist groups and drug traffickers" (Walsh, 2007, p. 151). Therefore it seems reasonable that the German and British governments would willingly work together with the United States on intelligence gathering in order to curtail threats.

However, once the information was leaked, the political responses from both countries' governments differed greatly: while the British government accepted complicity and defended the programs, the German government denied complicity and eventually attacked the programs. Hence, a conundrum arises: an explanation must exist to explain why despite German and British intelligence agencies' enthusiastic compliance with American intelligence, the former's government condemned the United States for conducting those operations once they were revealed, whereas the latter did not. This paper delves into this dilemma by outlining the background surrounding British-American and German-American intelligence relationships and analyzing the political effects to those relationships post-Snowden. A comparison of these two analyses will hopefully illuminate whether there are lessons to be learned regarding intelligence gathering and surveillance within allied states. It will also seek to answer whether the United States should take the supposed strain on American-German relations seriously or if this is a case of one eagle attempting to scare another from the former's nest.

## **BUILDING THE SNOWPACK**

To provide a reference point with which one may compare the German–American intelligence relationship to, there is none better than to compare than the British–American intelligence relationship. The British–American intelligence partnership dates back to the World War I era, but an explicit partnership was established post–World War II and continues to the present day, making it the most stable bilateral intelligence partnership in history. The relationship is also well-documented, making it a rarity among intelligence partnerships, as the very nature of such partnerships precludes secrecy. Intelligence, as used here, is defined as “linked to the production and dissemination of information” and “performed by officers of the state for state purposes” (Warner, 2002, p. 21). Specifically, it is important to look at signals intelligence (SIGINT) collaboration, as SIGINT is most identified with communications, data collection, and data surveillance, and the agencies responsible for SIGINT, the NSA and the United Kingdom’s Government Communications Headquarters (GCHQ), are the two agencies that are at the center of the Snowden leaks.

The NSA and GCHQ began their formal partnership after their two respective states forged the United Kingdom–United States of America Agreement (UKUSA), the first framework sanctioning official communications intelligence exchange approved on March 5, 1946 (United States Government; United Kingdom Government, 1946). The agreement allowed for free exchange of foreign communications between the two nations, which in turn meant that the two nations also shared decryption tools and processes (Aldrich, 2001, p. 246). Once the NSA was created by President Harry Truman, it became the go-to agency for American SIGINT, working together closely with GCHQ to monitor the Soviet Union (Aldrich, 2010, p. 104). UKUSA was later expanded to include the participation of Canada, Australia, and New Zealand during the early years of the Cold War, forming the intelligence-sharing network known as the Five Eyes (The National Archives, 2010).

GCHQ and the NSA continued to work intimately on various projects into the twenty-first century, many of which were revealed by Snowden. The two agencies fought privacy measures such as public key encryption in order to maintain a strong surveillance presence into the Internet age (Aldrich, 2010, p. 489). Despite losing that battle, the two agencies found ways of circumventing the encryption problem through backdoor channels on software with the cooperation of private firms (Ball, 2013). GCHQ also operated a project known as “Mastering the Internet” which involved a subproject called Tempora, involving intercepting data as it entered England through fiber-optic cables running underwater at areas such as Cornwall. GCHQ analyzed the data collected here and also passed on information to NSA for analysis (MacAskill, Borger, Hopkins, Davies, & Ball, 2013). Monetary support between the United States and the United Kingdom also occurred; from 2010 to 2013, the United States government paid at minimum 100 million pounds to the British government with the intent to modernize and expand GCHQ’s data collection capabilities (Hopkins & Borger, 2013). These are but some of the many instances that show how close the GCHQ–NSA relationship, and by extension, the British–American intelligence relationship remains. Similar instances could be also found between the BND and American intelligence agencies.

The BND and the NSA share a hierarchical relationship, often characterized as one

between a younger sibling and an older sibling (Livingston, 2014). During the early stages of the Cold War, the Western Allied-controlled portion of Germany was on the frontline. Due to the increase of possible hostilities between the former Allies, the land that would become West Germany became pivotal for signals intelligence collection to monitor Soviet movements. To this end, former German Army intelligence chief Reinhard Gehlen formed the Gehlen Organization under the supervision of the United States Army, effectively creating a German intelligence apparatus under the umbrella of the American military (Walsh, 2007, p. 169). As the intelligence provided to the Americans from the Gehlen organization seemed invaluable, when the time came to divide Germany into two states, the United States continued to control the Gehlen Organization through the American Central Intelligence Agency (CIA) (Walsh, 2007, p. 169). The Gehlen Organization would evolve into the BND. In 1962, the BND established a formal SIGINT relationship with the NSA (National Security Agency, 2013). By this time, the BND was autonomous but continued to remain effectively tied to, though not necessarily overseen, by American intelligence agencies.

The elder-sibling/younger-sibling dynamic continued well into the twenty-first century, where technological advancements and proximity to the Middle East increased the prestige of German signals intelligence operations and made German intelligence a particular boon for counterterrorism measures, but the general hierarchical framework persisted. After the September 11th terrorist attacks, the United States and Germany signed an intelligence sharing agreement that would have the United States provide contact information and other data for German foreign intelligence to use for targeting purposes (Gude, et al., 2014). The agreement specifically allowed the United States to analyze data and signals being received by the Bad Aibling listening post in Bavaria (Gude, et al., 2014). The station, which was originally built by the NSA as a listening post and held under joint NSA-BND control for years, was eventually transferred to full BND control, but the NSA retained a permanent staff on location (Gude, et al., 2014). The NSA-BND partnership itself would become solidified as the Joint SIGINT Activity (JSA) (National Security Agency, 2007/2008). In addition, the NSA also provided the Federal Office for the Protection of the Constitution (Bundesamt für Verfassungsschutz or BfV), the German domestic intelligence office, with the intelligence analysis program XKeyscore (Gude, et al., 2014). On the whole, the partnership seemed very warm. To quote one internal NSA information paper from 2013, “[In] the past year, Germany displayed both eagerness and self-sufficiency in transforming its SIGINT activities and assumed greater risk in support of U.S. intelligence needs and efforts to improve information sharing within the German government, with coalition partners, and NSA” (National Security Agency, 2013). This statement shows that the Americans recognized an eagerness for German involvement with NSA SIGINT efforts.

What both these stories illustrate is that British signals intelligence and German foreign and domestic intelligence held very strong partnerships with the NSA. Both GCHQ and the BND have a history of partnership that dates back decades and that the NSA had particularly strong influence in the operation of both agencies. Considering the ensuing political aftermath of the Snowden leaks, both agencies’ respective governments would fight tooth and nail to defend their past actions, particularly as they both retained ultimate oversight over those agencies. Surprisingly, that was not what happened.

### WATCHING THE SNOWSLIP

The leaks first became public in early June 2013, early on implicating and enraging the British government. One day after the leaks, the British newspaper *The Guardian* published an article claiming that GCHQ was collecting intelligence from large Internet firms through the NSA-built PRISM program. GCHQ refused to comment regarding the program. In the following weeks, *The Guardian* and *The Washington Post* continued publishing information about the joint surveillance and data collection activities, prompting the British government to contact *The Guardian* to request that the leaks stop (Van Sickle, 2014). The government's response soon turned indignant. British Prime Minister David Cameron remarked that what "Snowden is doing and to an extent what the newspapers are doing in helping him is frankly signaling to people who mean to do us harm, how to evade and avoid intelligence and surveillance and other techniques" (Hope & Waterfield, 2013). A member of British parliament called for the editor of *The Guardian*, Alan Rusbridger, to face criminal prosecution over publishing the leaks (Mason, 2013). It was quite clear that the British government would not back down on its defense of the programs.

On the continent, the BND became implicated once the German newsmagazine *Der Spiegel* got hold of documents pertaining to German-American intelligence liaison. One month after the initial leaks *Der Spiegel* published articles claiming that the BND conducted surveillance and data collection on behalf of the NSA, sending data on German residents to the Americans (Gude, et al., 2014). The files obtained by Snowden were then released for public download by *Der Spiegel*, fueling the growing fire of blame underneath the Chancellery, as it maintains oversight and responsibility over the nation's federal intelligence agencies. The leader of the German parliamentary opposition at the time, the Social Democratic Party's (SPD) Peer Steinbrück accused Chancellor Angela Merkel and the incumbent government of blatantly lying to the public, stating that the "latest media reports about the close relationship between German and American intelligence services confirm the impression that the German government either feigned ignorance, kept quiet about its complicity or that the intelligence agencies have gotten out of control" (Medick, 2013). Accusations of the government watering down German basic law followed, with constitutional experts questioning the legality of the Chancellery's complicity (Gude, et al., 2014).

For its part, the German government remained relatively quiet about the leaks, claiming nescience before being exposed. Before the leaks shed light on German intelligence involvement, the incumbent government made claims that the revealed programs were only being discovered through news coverage. Despite claims of possible German involvement in the NSA's PRISM program, the official government response remained reserved. Merkel kept a neutral public attitude regarding the leaks, refusing to comment until a review of PRISM was completed by the United States, while affirming German sovereignty (*Der Spiegel*, 2013). Once *Der Spiegel* published the documents Snowden leaked pertaining to Germany, criticism against the government mounted. Around the same time, high-ranking German intelligence officials received legal affirmation from both GCHQ and the NSA that neither organization had acted illegally according to established agreements between Germany and the organizations' respective countries (Gude, Von Hammerstein, Hesse, Rosenbach, & Schindler, 2013). With the affirmation of legality, it became accepted that the BND was responsible for the bulk data collection (most of

which was claimed to originate from Afghanistan), and that appeared to be that.

However, the situation did not go away, and the German government's attitude became increasingly anti-American. *Der Spiegel* conducted further analysis of the leaked NSA documents, finding that Merkel's cell phone calls were actively intercepted (Appelbaum, et al., 2013). A parliamentary probe was established to investigate the extent of the NSA leaks (The Local, 2014). A federal investigation was opened up over the NSA (Gude, Schindler, & Schmid, Merkel's Mobile: Germany Launches Investigation into NSA Spying, 2014). Compounding the wiretapping issue was the discovery and arrest of an American mole within the BND. One year after the first published leaks, the German government demanded the expulsion of the CIA Berlin station chief (Miller & Kirchner, 2014). The Washington-Berlin relationship became increasingly tepid.

American officials understood the necessity of mollifying German unease both in public and in the German government to varying success. During President Barack Obama's first speech in Berlin following the Snowden leaks, he dedicated a section of the speech assuring the German public that the revealed intelligence gathering and analysis programs were bound by "the rule of law, and they're focused on threats to our security – not the communications of ordinary persons" (The White House, 2013). Once allegations of eavesdropping on Merkel's phone calls were confirmed, Secretary of State John Kerry made a diversion during a trip to Munich to personally meet with Merkel and German Foreign Minister Frank-Walter Steinmeier regarding collaboration issues (Schmitz & Gebauer, 2014). Before Merkel's visit to the United States in April 2014, Obama and Merkel publicly stated that they wished to create a "structured dialogue" which Kerry opened the door to during his visit (Blome, Schmitz, & Stark, 2014). However, tensions once again rose once the American BND mole was arrested, and the United States bowed to Germany's order to relieve its Berlin CIA chief.

### DIGGING A SNOWPIT

The depth and warmth of the British-American and German-American relationships have now been established, as well as each nation's respective SIGINT organization's complicity in NSA programs revealed by Snowden, therefore leaving open the question of why both governments' responses seemed so contrary. There are several plausible explanations as to why the German government reacted very differently than the British government did after the leaks. As internal information regarding precise attitudes within the German government remains inaccessible and will likely remain so into the near future, one should not be surprised that the veracity of the following explanations cannot be officially confirmed. However, some or even all of these factors could contribute to an answer and therefore should be considered carefully. The following two sections will focus on political analyses on the individual, domestic, and international level to explain as fully as possible the disparity between the British and German reactions.

A historical perspective is important to consider particularly when analyzing the evolution in Merkel's political responses to the leaks. After World War II was over and the German state was separated, West Germany maintained the BfV and BND as their primary intelligence and security organizations while East Germany had the Stasi. The Stasi were well known for their mass surveillance and brutal methods, leaving a lasting legacy on the German public, particularly on former East Germans such as Merkel (Chambers,



2009). Merkel's own father operated a seminary, many of which were infiltrated by the Stasi to monitor non-communist teachings, and Merkel herself refused to inform on behalf of the Stasi while she was seeking a teaching position in her younger years (Crawford & Czuczka, 2013). Such past experiences may have made her more amenable to attacking the American position on their intelligence gathering activities once it was discovered that she was personally targeted. The evidence for this interpretation revolves around the change in tone of the Chancellery's message regarding American surveillance activities before and after it was made clear that Merkel's phone calls were listened in to. Of course, similar experiences also likely influenced German public opinion against the United States when the extent of the NSA's operations became known – which allowed Merkel's political rivals to attack her and her party in the 2013 German federal election.

Domestically, it would be fairly easy for an opposition party to criticize an incumbent government of sacrificing their citizens' privacy and human rights to some foreign menace (in this case, the Americans). Concurrent to the time of the Snowden leaks, Germany underwent a general election campaign fought primarily between Merkel's Christian Democratic Union (CDU) and the opposition SPD. When the leaks came out, the SPD jumped at the opportunity to criticize Merkel, due to the Chancellery being the body that supervises the intelligence services. The CDU fired back, citing that the SPD was in power during the time the first intelligence sharing agreements were forged in 2002, and that the SPD was also in power during Merkel's first term as Chancellor (Gude, Von Hammstein, Muller, & Schinder, 2013). However, many of the documents leaked by Snowden recount the relationship between the BND and the NSA during Merkel's tenure, allowing one to reasonably argue that she was more responsible than her SPD counterparts (National Security Agency, 2013). The strict stance against the United States occurred after the general election, during which Merkel formed a coalition with her political rivals, the SPD, giving them the foreign policy portfolio as well. The Chancellery then undertook a tougher stance on American surveillance and espionage, especially after *Der Spiegel* found that Merkel's phone calls were intercepted. The coalition government also called for the expulsion of the Berlin CIA station chief after arresting an alleged American mole within the BND (Miller & Kirchner, 2014).

Such a scenario involving attacks on government complicity was not possible in the United Kingdom. By the 2013, the Conservative–Liberal Democrat coalition was in power for three years, before which the Labour Party, the leading opposition party, was in power for the previous 13 years. This meant that the three largest British political parties were all in some way in power during the time period during which the programs revealed by Snowden were in place. For example, the presentations regarding PRISM include references to the program's use back to 2007, during which time Labour's Gordon Brown held an absolute majority in Parliament (PRISM Collection Manager, 2013). Granted, after the Conservative coalition came into power in 2010, there seems to have been a shift in focus toward GCHQ activities, shown by government acceptance of American funds for expanding GCHQ's capabilities, possibly signaling greater government support over the surveillance and data collection activities enacted by the NSA and GCHQ.

On the international level of analysis, Germany's reactions may be symptomatic of a greater power shift. Walsh argues that in the traditional framework of the international

state system, despite an anarchic international order, hierarchical intelligence sharing relationships could be formed if the gains were great enough (Walsh, 2007, p. 177). Also, due to the inherent power dynamics of such a relationship, one can easily determine which the greater power is and which is the lesser based on their position in an intelligence-sharing relationship. Walsh claims that both Germany and the United Kingdom participate as subordinate partners to the United States with regards to intelligence sharing (Walsh, 2007, p. 178). Though his analysis is of relationships from the early Cold War, one can easily see parallels today – GCHQ’s funding by the NSA echoes American funding efforts post World War II, while the NSA’s construction and joint operation of the Bad Aibling station with the BND retains hallmarks of the time the CIA managed the BND’s predecessor. One caveat is that the United Kingdom’s relationship with the United States may also be considered more anarchic (or less hierarchical), due to UKUSA allowing either state to withhold certain information from the other assuming the latter agrees to nondisclosure (Aldrich, 2001, p. 247; Walsh, 2007, p. 178). Either way, the German-American intelligence relationship is undoubtedly hierarchic.

Under this interpretation, Germany’s decision to defect from the agreement may indicate that the German state no longer sees itself as belonging within a hierarchical relationship with the United States. Evidence for German defiance of American-backed policy post-Cold War is well known, including overtures for trade agreements with China against American wishes as well as the previously mentioned actions the Germans took against American intelligence interests (Kundnani, 2014). These actions come at a time where Germany is becoming increasingly seen as the leader of the European Union and one of the world’s foremost rising powers (Kundnani, 2014); therefore it seems very likely according to liberal institutional theory that Germany no longer sees adequate payoffs from a hierarchical relationship. In contrast, the United Kingdom declined internationally since World War II, with the forfeiture of several of its colonial possessions. In relation to the United States, the United Kingdom took on the role characterized as a partner past its prime. Former British Prime Minister Harold Macmillan once quipped that “These Americans represent the new Roman Empire and we Britons, like the Greeks of old, must teach them how to make it go” (Hitchens, 1990, p. 23).

Prima facie the domestic analysis of the situation comes across as the most compelling. Certainly, it is clear that domestic motivations were on the mind of government officials, particularly Merkel and her fellow CDU members who were up for reelection and required the opposition SPD to form a government post-election. Posing in a more anti-American stance during this time could be construed as cut-and-dry political strategy. However, the international level analysis of the situation may bear more interesting insight into what might be a marked change in American-German relations. Merkel transferred the foreign policy portfolio within her new coalition government to the SPD, granting the party that most criticized the intelligence-sharing policy of the previous government influence over policy in that sector. Furthermore, by continuing to hammer the American government and with the resulting American retreat in some intelligence activities, Germany looks more equal with the United States, at least in public perception. These subtle shifts do suggest that optic-wise, Germany began to show itself successfully defecting from a hierarchical relationship with the United States, and the United States acknowledging that the relationship was now less hierarchic.

### WITHSTANDING THE SNOWSTORM

At the very least, the German public's reaction is understandable considering the lack of public consent regarding the activities conducted on them. Former GCHQ head David Omand wrote that in some sense the public must maintain confidence in the intelligence activities conducted upon them by their government, as these activities are conducted on behalf of the individual as well as the state (Omand, 2010, p. 262). It would be a different matter if the United States unilaterally conducting espionage and data gathering activities (which it did), but the matter at hand concerns the German government's willingness to enter into the data surveillance relationship without legislative review. Such reviews and accountability structures, however effective, do exist in the United Kingdom (Omand, 2010, p. 267). Therefore, one could say that in the British case the subjects of the state had their say through their representatives. The nature of this issue within Germany is sadly dubious without official government records; the Chancellery could have lacked proper control over its agencies or it could have been aware of the programs and simply chose not to inform the appropriate legislative bodies. Regardless, because some of the domestic political pressure against the aforementioned activities, the United States should accept the necessity of some of the German government's moves decrying American intelligence activities.

For the United States, several courses of action remain available. Regarding repairing German-American relations, it may be prudent to once again offer Germany membership within the Five Eyes or negotiate another, relatively more equitable intelligence-sharing agreement. Such a status could appease any German sentiment surrounding escaping the hierarchical intelligence relationship, and would allow the United States full access to German foreign SIGINT. The Obama administration rebuked a similar request from Merkel in the past while Merkel rebuked offers made to her (Donahue & Walcott, 2014), but stances can change and domestic American support for such a decision does exist (Passenheim, 2013). Another choice would simply be to wait out the political damage before resuming operations at as large a scale pre-Snowden. However, considering both German anger and domestic pressure to reform or at least rein in American intelligence agencies, such a tactic may cost significant time and opportunities, depending on the value of the SIGINT obtained through BND liaison. Important to note however, is that whatever fuss the German government formulated, affirmations of friendship continued, at least in public statements. Considering the geopolitical situation at the time regarding the Russian seizure of Crimea and the deterioration of the Ukrainian crisis, such affirmations would be political necessity to counterbalance against a resurgent Russia.

At first, the lesson from the political fallout of the Snowden leaks and ensuing intelligence scandals seems to be that even intelligence activities, no matter how common or well-intentioned, will meet resistance from friends as well. To avoid similar debacles with allies in the future, the United States should examine the pretense of equality encapsulated within UKUSA and determine whether in the future, the United States will benefit from similar relationships with other states like Germany. Whether or not these relationships are actually reformed remains a separate matter, but intelligence relationships should be constantly reevaluated to mirror the changing world. There may come a day where the United States no longer maintains a dominant intelligence apparatus or reach or maybe that day will never come, but to avoid being snowed in politically by future leaks, maintaining strong political ties with intelligence partners should be imperative.

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